

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 1.04 THE CITY OF LEON VALLEY, TX. CODE OF ORDINANCES TO ADOPT SECTION 1.04.006 OF THE CODE OF ORDINANCES; IMPOSING PROCEDURES PURSUANT TO SECTION 3.12 OF THE CITY CHARTER WHEN CONDUCTING A COUNCIL INVESTIGATION AND HEARING; PROVIDING FOR REPEALER, SEVERABILITY AND SAVINGS CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

Whereas the City Council finds it has previously adopted, by ordinance, general rules applicable to a special meeting, such as a § 3.12 hearing, such rules provide only general guidance;

Whereas the City Council finds that requiring specific procedures and protocols for the § 3.12 hearing set to consider complaints against respondents are in the best interest of the complainants, the respondents, and the citizens;

Whereas the City Council finds the below procedures and protocols do not change or alter the rules of procedure adopted by the City Council, but provide further guidance consistent with such rules for the efficient and effective conduct during a hearing called under §3.12 of the City Charter;

Whereas the City Council finds members of the City Council are entitled to have, at their own expense, an attorney to provide them legal advice, if any members become the subject of a complaint under the Charter. However, such attorney may not make a presentation to the City Council at the §3.12 hearing but may advise the respondent during the hearing;

Whereas the City Council finds each complainant is entitled to have, at his / her own expense, an attorney to provide him / her legal advice, if he / she chooses to employ one. However, such attorney may not make a presentation to the City Council at the §3.12 hearing;

Whereas the City Council finds it shall not compensate any council members for attorney's fees incurred when the council member is the subject of a complaint under the Charter.

Whereas the City Council finds the following procedures and protocols are reasonable and necessary for the efficient operation of government.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS:

SECTION 1. Chapter 1, Article 1.04 of the City of Leon Valley Code of Ordinances is hereby amended to adopt Section 1.04.006 City of Leon Valley's Code of Ordinances, and shall read as follows:

Section 1.04.006 - Procedures for City Council Meetings Under Section 3.12 of the City Charter

A. Definitions: For purposes of a meeting held under §3.12 of the City Charter, the following definitions of words and phrases controls.

- 1. *Complainant*** shall mean a person who has filed an official complaint against the official conduct of any department, agency, appointed boards, office, officers, officials, employees or appointed board members of the City and the City Council has determined it will conduct a §3.12 hearing regarding the charges in the complaint. While an official complaint is not necessary for the City Council to hold a §3.12 hearing, when a complaint has been filed, the filer shall be known as the Complainant.
- 2. *Designated Officer*** shall mean an individual designated by the City Manager or City Council to examine any complaints filed against the official conduct of any department, agency, appointed boards, office, officers, officials, employees or appointed board members of the City. The Designated Officer may also be referred to as the Investigating Officer. If the Respondent is a member of the City Council as defined under the Charter, then the Designated Officer shall be appointed by a majority vote of those members of the City Council entitled to deliberate and vote under the Charter. If the Respondent is the City Manager or a member of an appointed board of the City, the City Council shall appoint the Designated Officer. In the event the Respondent is a member of the City Council or the City Manager, the Designated Officer shall be an attorney or law firm which is not employed by the City and does not have any active representation of the City in order to promote neutrality in the process and a disinterested investigator. The City Council shall ensure the Designated Officer has sufficient qualifications and experience in municipal or employment matters to fulfill the obligations of the role. In all other circumstances, the City Manager shall appoint the Designated Officer.
- 3. *Majority Vote*** shall mean an affirmative vote of the majority of council members present and voting during a §3.12 hearing. When a council member is present but not deliberating or voting due to a restriction under the Charter, such failure to vote constitutes an abstention.
- 4. *Presiding Officer*** shall mean the officer charged with presiding over the §3.12 hearing. Unless disqualified by the Charter or other law from acting as the presiding officer, the Mayor shall be the presiding officer at all §3.12 hearings. If the Mayor is unwilling or unable to act as presiding officer, the Mayor Pro Tempore shall act as the presiding officer. If no Mayor Pro Tempore is appointed or if the appointed Mayor Pro Tempore is unable or unwilling to act as presiding officer, then the council member with the most seniority on the City Council who is able to deliberate and vote shall be the presiding officer.

5. **Public Official** shall mean a public officer of the City as defined by state law or an individual appointed by the City Council to hold a specific position, including a position on a City board, commission or committee. For purposes of this section of the Code, it shall also be any individual in any department, on any agency, appointed board, office, and any officers, employees or appointed board members of the City. An individual may be an employee, or public official or both, depending on the position held. However, for purposes of this section, the municipal court judge shall not be considered a public official or employee.
6. **Quorum** shall mean at least three (3) City Council members convened in the same place at the same time pursuant to the Texas Open Meetings Act.
7. **Respondent** shall mean a public employee, officer, or official of the City of Leon Valley who is the subject of any investigation, disciplinary or referral consideration by the City Council under §3.12 of the City Charter. The term includes anyone the subject of any charges being investigated by the City Council pursuant to §3.12.

B. General Process:

1. All hearings held under §3.12 of the City Charter shall be special meetings.
2. All hearings held under §3.12 of the City Charter shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act.
3. The City Council shall have the power to utilize a §3.12 hearing to inquire into the official conduct of any department, agency, appointed boards, office, officers, employees or appointed board members of the City. Such includes the actions of any member of the City Council, including the Mayor.
4. Part of the purpose of §3.12 of the City Charter is to allow the legislative body of the City to investigate any matters relating to the City and its employees and officials. As a result, all evidence and testimony shall be submitted to the members of the City Council who may deliberate and vote on the matters under investigation.
5. While the §3.12 hearing process is designed to be an investigation authorization of the City Council, the Charter expressly allows the City Council to utilize a §3.12 hearing to make findings, impose discipline or make recommendations and referrals for disciplinary actions.
6. When the Respondent is not a member of the City Council or the Mayor, references under this section to forfeiture shall not apply. Nothing in this

section is intended to interfere with or alter the ability of the City Manager to hire, discipline, or fire City employees and officials subordinate to the City Manager. If the City Council investigates a City employee or an official subordinate to the City Manager, the City Council may make a recommendation to the City Manager about the employee/official but may not otherwise take action against the employee/official.

7. A member of City Council or the Mayor who is a Complainant or Respondent shall not sit at the dais and shall not participate in deliberation or vote. However, such restrictions do not prevent the Complainant or Respondent from counting towards a quorum or in placing items on an agenda.
8. No public comment shall be allowed during a §3.12 hearing, unless agreed upon by a majority vote of the members of the City Council who may deliberate and vote during the §3.12 hearing.
9. For a §3.12 hearing, only those matters which are the subject of the investigation, charges, discipline or referral may be on the agenda for consideration and action.

C. Protocols for Conducting § 3.12 Hearing

1. **Order.** Call the meeting to order.
2. **Roll Call.** Acknowledge the presence of quorum. For purposes of the open meeting, any council members who are prohibited from deliberating or voting pursuant to §3.12(B)(4) of the City Charter shall still count, if physically present, towards a quorum for purposes of the Texas Open Meetings Act.
3. **Acknowledge Charter Imposed Limits:** If either the Complainant or the Respondent is a member of the City Council, including the Mayor, the presiding officer shall state to the public that such council member or the Mayor cannot assume the dais, deliberate, or vote on matters related to the complaint. However, the Charter allows the Complainant and Respondent the ability to provide evidence and information.

If the Complainant or Respondent is a public official other than a member of the City Council, including the Mayor, the Presiding Officer shall simply identify the nature of the public official's involvement and that they are acting as a complainant or respondent at the hearing.

4. **Special Meeting:** Acknowledge this is a special meeting called pursuant to §3.12 of the Leon Valley City Charter.
5. **No Citizen Comments:** No citizen comments or citizens to be heard is permitted unless agreed upon by a majority vote of the members of the City Council who may deliberate and vote during the §3.12 hearing.

- 6. Executive Session:** If executive session is necessary, those members of the City Council permitted to deliberate and vote shall convene into executive session pursuant to Texas Government Code §551.071 (consultation with attorney), if applicable. No other grounds for executive sessions shall be allowed during a §3.12 hearing.
- 7. Open Session:** Read the agenda item for a §3.12 hearing pursuant to the City Charter against the Respondent(s).
- 8. Explanation of Purpose of Meeting:** For the first hearing held regarding the investigation or charges, the Presiding Officer shall read to the public a statement regarding the nature of the investigation or charges and identifying the Respondent and the Complainants, if any. If more than one hearing is held regarding the investigation or charges, subsequent meetings are not required to have an explanation to the public.
- 9. Call for Presentation of Charges:** For the first hearing held where charges have been filed or where they will be considered, the Presiding Officer shall call the Designated Officer to publicly read a summary of the charges against each Respondent. If more than one hearing is held regarding the charges, subsequent meetings are not required to read the charges.
- 10. Presentation of Investigation Results:** If any investigation has occurred prior to the City Council convening a §3.12 hearing, the Designated Officer shall present such investigation to the City Council along with evidence collected. This shall be a summary of the factual findings, unresolved factual questions, and reference to the evidence provided to the City Council regarding the read charges. At least fourteen (14) calendar days prior to the holding of a § 3.12 hearing where charges will be considered against a Respondent, the Respondent shall be entitled to a copy of any documentary evidence which is anticipated to be presented to the City Council at the §3.12 hearing which is not protected by the attorney / client privilege.
- 11. Presentation by Complainants:** If any Complainants exist and wish to speak to the City Council about their complaints, such Complainants shall be given an opportunity to present a sworn statement at the §3.12 hearing. Such statement may be written or provided orally to the City Council while under oath. Each Complainant must be put under oath and sworn before submitting any statement or evidence during the hearing. Oaths may be administered by the City Secretary or any person authorized to administer oaths in Texas. Those members of the City Council who may deliberate and vote at the §3.12 hearing may question any Complainant about their Complaint during this presentation.
- 12. Presentation by Called Witnesses:** At the City Council's discretion, it may call any witnesses it wishes by majority vote of the members of the City Council who may deliberate and vote at the §3.12 hearing and who are present. Such witnesses must be put under oath in order to provide information or evidence at

the hearing. Only the members of the City Council who may deliberate and vote at the §3.12 hearing may question any witness.

13. Presentation by Respondent: The Respondent shall be given an opportunity to respond to the charges and present any relevant evidence including testimony from individuals on his / her behalf. However, the Respondent may not ask any witness questions. Only the members of the City Council who may deliberate and vote at the §3.12 hearing may ask witnesses questions. The Respondent may only present information and evidence at the §3.12 hearing if the Respondent is placed under oath. Only the members of the City Council who may deliberate and vote at the §3.12 hearing may ask the Respondent any questions relating to the complaints. All witnesses called by Respondent must be placed under oath. Only the members of the City Council who may deliberate and vote at the §3.12 hearing may ask any witness questions or to provide any evidence it determines is necessary.

14. Council Inquiry: The members of the City Council who may deliberate and vote at the §3.12 hearing, may recall any witness one time by stating the relevant reason for the recall, or inquire of any person or compel the production of any documents or evidence they determine are necessary to investigate or to make a determination on any complaint. Nothing precludes the members of the City Council who may deliberate and vote at the §3.12 hearing from continuing to seek information, evidence, and testimony, even after the Respondent has provided his / her testimony. However, any new charges must be provided to the Respondent prior to any §3.12 hearing where disciplinary action or referral will be considered.

15. Compelling Documentation: For the purpose of investigations and hearings, the members of the City Council who may deliberate and vote at the §3.12 hearing, by majority vote of those present and voting, shall have the power to administer oaths, subpoena witnesses, and compel the production of books, papers, and other evidence material to the inquiry.

16. Council Deliberation/Motion on Complaints: Any member of the City Council permitted to deliberate and vote regarding the investigation, charges, disciplinary action or referral action may make a motion to consider the merits of any investigation, charges, disciplinary action or referral action. However, such motion may not be made until after the Respondent has been provided notice and an opportunity to be heard regarding the charges, disciplinary action or referral action.

- a. If the members of the City Council permitted to deliberate and vote at the §3.12 hearing determine the Respondent who is a member of the City Council, including the Mayor, violated §3.08 of the City Charter and is no longer qualified for the Respondent's position, they must make a motion to declare the position forfeit and vacant.

- b. If the members of the City Council permitted to deliberate and vote at the §3.12 hearing determine the Respondent who is a member of the City Council, including the Mayor, violated §3.09 of the City Charter, they may make a motion to impose a sanction or other penalty authorized by law. While the members of the City Council permitted to deliberate and vote at the §3.12 hearing can vote on forfeiture under §3.09, the forfeiture can only be based on a violation of §3.09, not on any other Charter provision.
- c. If the members of the City Council permitted to deliberate and vote at the §3.12 hearing determine the Respondent did not commit the acts alleged or that such acts do not constitute a violation of the Charter or City ordinance, they can move to dismiss the charges or cease any investigation.
- d. If the members of the City Council permitted to deliberate and vote at the §3.12 hearing determine further investigation is needed, they may also move for further investigation.
- e. The members of the City Council permitted to deliberate and vote at the §3.12 hearing may act by a combination of any of the above. However, the determination of forfeiture should occur first, if applicable. If the position is considered forfeit under any complaint or charge, no further action is required on any remaining charges against the same Respondent.
- f. Any vote for forfeiture must be by a two-thirds (2/3) majority vote of those council members present and permitted to vote. Any vote for a penalty less than forfeiture or any vote to dismiss a complaint, requires an affirmative vote of a majority of the council members present and permitted to vote.

17. Council Deliberation/Motion on Penalty: If, and only if, the members of the City Council permitted to deliberate and vote at the §3.12 hearing determine, by affirmative vote of those members present and voting, that a violation of the City's Charter or ordinances has occurred such members may impose a penalty. Penalties imposed must be voted on separately from the determination of whether a Respondent committed a violation of Charter or ordinance. Only the members of the City Council permitted to deliberate and vote at the §3.12 hearing may vote on any penalty at a §3.12 hearing. Penalties available to the members permitted to vote include:

- a. To declare the Respondent's position forfeited under §3.08 or §3.09 of the City Charter and it is therefore vacant;
- b. To impose a lesser penalty, including but not limited to:
 - i. Letter of Reprimand;
 - ii. Censure;
 - iii. Impose restrictions designed to prevent future violations;
 - iv. Impose training;

- v. To enforce a penalty pursuant to §7.13 of this Charter;
 - 1. Criminal misdemeanor referral to the appropriate criminal prosecutor;
 - 2. Impose a civil penalty (i.e. fine with max \$500) (requires 2/3 vote);
- c. To direct further investigation necessary to determine an appropriate penalty, such as research into available trainings or other third-party options.

18. Vacancy: If the Respondent is found by the City Council to have forfeited the position held, the position cannot be filled by appointment during the §3.12 hearing where forfeiture is determined. The action of appointing a replacement consistent with the Charter and state law shall occur at the next council meeting, regular or special, to occur after the conclusion of the §3.12 which declared the forfeiture.

19. Adjournment. Once all matters are resolved by the City Council, the Council must adjourn.

D. Penalties As To Witnesses and Records: In addition to the penalties which may be imposed upon a Respondent found to have violated the Charter or an ordinance, the City Council may also impose a penalty upon any person, including Complainant, Respondent, witness, citizen, corporation, or other entity, which the City Council finds failed to properly and fully respond to its subpoena to appear, provide testimony or produce documentation. It may also impose a penalty upon anyone found to be disrupting the §3.12 hearing after such person has received a warning regarding the disruption and persisted with any disruptive behavior. The City Council, in imposing a criminal penalty, may refer the charge to the state's attorney. The City Council may impose a civil penalty for contempt or disruption after notifying the person charged with contempt or disruption of the charge and allowing them the opportunity to respond at a separate hearing. It is a criminal class C misdemeanor offense, punishable by a fine between one dollar (\$1.00) and five hundred dollars (\$500.00) for any person to refuse or fail to obey a command or subpoena from the City Council to properly and fully respond to its subpoena to appear, provide testimony or produce documentation. It is also a criminal class C misdemeanor punishable by the same fine range for a person to disrupt a §3.12 hearing. The City Council may impose a civil penalty upon any individual under this section up to \$500.00 for each failure, refusal or disruption.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS:

SECTION 1. Chapter 1 of the City of Leon Valley Code of Ordinances is hereby amended to add Section 1.04.006 City of Leon Valley's Code of Ordinances.

SECTION 2. All provisions of the Code of Ordinances of the City of Leon Valley codified or uncoded, in conflict with the provisions of this Ordinance are hereby repealed, and

all other provisions of the Code of Ordinances of the City of Leon Valley codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 3. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

SECTION 4. The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this Ordinance.

SECTION 5. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Leon Valley this the 4th day of June 2019.

APPROVED

CHRIS RILEY
MAYOR



Attest:

SAUNDRA PASSAILAIGUE, TRMC
City Secretary

Approved as to Form:

DENISE FREDERICK
City Attorney